IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 20..01..2007

CORAM:

THE HONOURABLE MR. JUSTICE K.CHANDRU

W.P.Nos.20933 & 23606 of 2006
and
M.P.Nos.1 & 2 of 2006
and
W.P.Nos.22142 to 22145 of 2006,
M.P.Nos.1 & 2 of 2006 in W.P.No.22142 of 2006,
M.P.Nos.1 & 2 of 2006 in W.P.No.22143 of 2006,
M.P.Nos.1 & 2 of 2006 in W.P.No.22144 of 2006
and
M.P.Nos.1 & 2 of 2006 in W.P.No.22145 of 2006

W.P.No.20933/2006

The Management
M/s.Hindustan Motors Earth Moving
Equipment Division Limited,
Chennai Car Plant,
Adhigathur Village,
Kadambathur Post,
Thiruvalloore-631 203 ... Petitioner

.Vs.

1. The Presiding Officer,
   Principal Labour Court,
   Chennai.

2. Mr.T.Soundrarajan,

3. M/s. Catter Pillar India Private Ltd.,
   (Erstwhile Hindustan Motors Limited
   Earthmoving Equipment Division),
   Thiruvallur - 602 004. . . Respondents

This Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for records relating to I.A.No.117 of 2006 in I.D.No.514 of 2001 on the file of the first respondent and quash the order dated 19.6.2006 made in I.A.No.117

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of 2006 in I.D.No.514 of 2001 and consequently direct the first respondent to permit the petitioner to be represented by its counsel on record in I.D.No.514 of 2001.

For Petitioner : Mr.C.Saravana Kumar for
M/s. Ramasubramaniam & Associates

For Respondents: Mr.V.P.Rajendran, for R2

for R1-Court.

W.P.No.23606/2006

The Management
Caterpillar India Pvt Ltd.,
Melnallathur
Tiruvellore - 602 004 ... Petitioner

.Vs.

1. The Presiding Officer,
Principal Labour Court,
Chennai.

2. Mr.T.Soundrarajan,

3. The Management,
Hindustan Motors Earthmoving Equipment Division,
Tiruvellore 602 004. . . Respondents

This Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for records of the first respondent and quash its order dated 19.6.2006 made in I.A.No.117 of 2006 in I.D.No.514 of 2001.

For Petitioner : Mr. John for
Mr.T.S.Gopalan

For Respondents: Mr.V.P.Rajendran, for R2

R1- Court.

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W.P.Nos.22142 to 22145 of 2006:

The Managing Director,
Tamil Nadu Cooperative
Milk Producers Federation Ltd.,
Chamiers Road,
Chennai-35. .. Petitioner in all the W.Ps.

Vs.

The Presiding Officer,
II Additional Labour Court,
Chennai. .. 1st respondent in all the W.Ps.

M.Radhakrishnan .. R2 in Wps.22142/2006
& 22144/2006

P.Sundararaj .. R2 in WP.22143/2006
& 22145/2006

Writ Petitions filed under Article 226 of the Constitution of India, all praying to issue Writs of Certiorarified Mandamus to call for the records of the 1st respondent respectively in I.A.No.68 of 2005 in C.P.No.209 of 2004; I.A.No.69 of 2005 in C.P.No.214 of 2004; I.A.No.70 of 2005 in C.P.No.455 of 2004 and I.A.No.71 of 2005 in C.P.No.456 of 2004, all dated 3.3.2006, on the file of the II Addl. Labour Court, Chennai and quash the same on the ground that Section 36 (4) of the Industrial Disputes Act is ultra vires of Articles 14 and 19 (1)(g) of the Constitution of India and direct the 1st respondent to allow the writ petitioner to engage an Advocate in the above said C.Ps.,on the file of the II Addl. Labour Court, Chennai without the consent of the 2nd respondent.

* * *

For petitioner in
all the W.Ps. : Mr.P.Gunaraj

For R.2 in
all the W.Ps. : Mr.G.Muthu

For R1 : Court

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C O M M O N O R D E R

Writ Petition Nos.20933 & 23606 of 2006 have been filed against the order of the Labour Court/first respondent made in I.A.No.117/2006 in I.D.No.514/2001 dated 19.6.2006 and the other four writ petitions were filed against the order in I.A.Nos. 68 to 71 of 2005 in C.P.Nos.209 of 2004, 214 of 2004, 455 of 2004 and 456 of 2004 respectively to quash the identical order dated 03.3.2006 and also to declare Section 36(4) of the Industrial Disputes Act, 1947 [for short, 'I.D. Act'] as ultravires of Articles 14 and 19(1)(g) of the Constitution of India.

2. It is seen from the records that the second respondent workman engaged an authorised representative to defend him in I.D.No.514/2001, relating to his non-employment. The writ petitioners were represented by a counsel and they filed Vakalat as early as on 27.3.2002. After 55 adjournments of the case, the workman filed an application in I.A.No.117/2006 objecting to the writ petitioner/management being represented by a legal practitioner, taking advantage of section 36(4) of the I.D.Act. This was resisted by a counter affidavit filed by the writ petitioner/management stating that the fact relating to the objection has been raised after five years and after the pleadings were completed and when the witnesses were about to be cross-examined and it was also stated that once the workman did not object to the appearance of the legal practitioner on the side of the management, that would amount to implied consent and the workmen has sprung a surprise after five years and has taken a point that he is not granting consent for appearance of the legal practitioner.

3. The Labour Court technically approached the subject and sustained the objection raised by the workman by its order dated 19.6.2006 solely on the ground that the workman did not give consent. The Labour Court seems to have relied on a catena of decisions of various Courts on the question of consent. Even though the restriction under section 36(4) has been upheld by the Supreme Court, in the present case, we are only concerned with the application of the said provision in a given situation. When once the workman gives up his right to object to the appearance of the counsel at the earliest stage and allowed the proceedings to go on merrily for a period of five years spanning over 55 adjournments as in the present case, there is no reason as to why such an issue should be allowed to be raised at the tail end of the proceedings. A speedy trial is a must in any proceedings and the workmen has put spokes on the proceedings by raising frivolous objection at the tail end of the trial. Such an objection can never be allowed and nowhere, Section 36 of the I.D. Act talks about any written consent of a party to be obtained in the matter of another party engaging a legal practitioner. In a given situation, the hyper technical approach of the labour Court should be avoided.

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Ultimately, the very creation of the Industrial adjudication is for an early disposal of the claims of the workman. But in the present case, unfortunately, the matter relating to non-employment of the workman is pending for more than five years at the hands of the Labour Court.

4. Without concerning about the same, learned counsel for the workman states that the objection relating to the consent for appearance can be raised at any time and he also relied upon the decisions which were also cited before the Labour Court. There is not a single decision of this court has been cited holding the view that the objection relating to the consent could be raised at any stage of the proceedings. On the contrary, it must be held that if the workman wants to exercise his right under section 36 of the I.D. Act so as to prevent the employer from engaging a lawyer, he should raise his objection at the earliest point of time. In any event, this objection seems to be very trivial considering the fact that often the workmen are represented by a leader of a trade union who are well versed in Labour Laws and many times they are also Advocates and if such objections are raised at their behest, the managements can also get a membership from some Chamber of Commerce and can indirectly engage legal practitioners, who are otherwise office bearers of such an organisation. The spirit of Section 36 of the I.D. Act has been practically defeated by the hide and seek game adopted by the parties before the Labour Court over the years.

5. The second respondents in W.P.Nos.22142 to 22145 of 2006 are the workmen and they have filed Claim Petitions under Section 33 C (2) of the I.D. Act before the Labour Court, claiming certain amounts, which are due to them from the writ petitioner/Management. These Claim Petitions were resisted by the writ petitioner/Management which is a State controlled Apex Milk Federation.

6. Pending Claim Petitions, the writ petitioner / Management had filed I.A.Nos.68 to 71 of 2005 under Section 36(4) of the I.D. Act, stating that the second respondents/workmen, though represented by a Trade Union Leader, he is actually a legal practitioner, practicing in High Court and other subordinate courts and since the writ petitioner/Management is defended by an Officer of the Federation, they are in a disadvantageous position and therefore, they sought permission to be represented by their Standing Counsel. This plea of the writ petitioner/Management was resisted by the workmen on ground that the Officers of the Federation themselves are the law graduates and therefore, no such permission need be accorded and that the Management need not be represented by a legal practitioner and that the request itself has been made at the time of examination of P.W.1 in the domestic enquiry. Reliance was also placed to certain decisions of various Courts to drive home the said point.

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7. The Labour court, by identical orders dated 03.3.2006, sustained the objection raised on the part of the workmen stating that unless there is a consent given by the workmen, as a matter of right, the Management cannot have the services of a trained lawyer. As the issue raised in these two sets of writ petitions are the same, with the consent of the parties, they were taken up together for final disposal.

8. Article 22(1) of the Constitution of India deals with protection against arrest and detention in certain cases. The said article is extracted below:

> "22. Protection against arrest and detention in certain cases – (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

However, there is a restriction on this right in cases of persons who are arrested and detained under any law providing for preventive detention and the Constitution under Article 22(3)(b) makes it clear that this right is not available to any detenu under preventive detention.

9. Section 11(4) of the National Security Act specifically bars the representation of a detenu before the Advisory board with the assistance of a legal practitioner. But when this provision was challenged, a Constitution Bench of the Supreme Court vide its decision reported in 1982 (1) SCC 271 [A.K.Roy vs. Union of India and others] considered the same and upheld the said provision on the ground that the said section is in conformity with Article 22(3)(b) of the Constitution of India. However, even while upholding the same, in paragraph 93, the Supreme Court held as follows:

> "93. We must therefore hold, regretfully though, that the detenu has no right to appear through a legal practitioner in the proceedings before the Advisory Board. It is, however, necessary to add an important caveat. The reason behind the provisions contained in Articl3 22(3)(b) of the Constitution clearly is that a legal practitioner should not be permitted to appear before the Advisory Board for any party. The Constitution does not contemplate that the detaining authority or the government should have the facility of appearing before the Advisory Board with the aid of a legal practitioner but that the said facility should be denied to the detenu. In any case, that is not what the Constitution says and it would be wholly inappropriate to

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read any such meaning into the provisions of Article 22. Permitting the detaining authority or the government to appear before the Advisory Board with the aid of a legal practitioner or a legal adviser would be in breach of Article 14, if a similar facility is denied to the detenu. We must therefore make it clear that if the detaining authority or the government takes the aid of a legal practitioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner. We are informed that officers of the government in the concerned departments often appear before the Board and assist it with a view to justifying the detention orders. If that be so, we must clarify that the Boards should not permit the authorities to do indirectly what they cannot do directly; and no one should be enable to take shelter behind the excuse that such officers are not "legal practitioners" or legal advisers. Regard must be had to the substance and not the form since, especially, in matters like the proceedings of Advisory Boards, whosoever assistants or advises on facts or law must be deemed to be in the position of a legal adviser. We do hope that Advisory Boards will take care to ensure that the provisions of Article 14 are not violated in any manner in the proceedings before them."

[Emphasis added]

10. When a matter relating to service regulation came up before the Supreme Court, in its judgment reported in (1983) 1 SCC 124 [Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath, Nadkarni and others], the Supreme Court had an occasion to consider the right of a legal practitioner to defend an employee in a domestic enquiry. In paragraphs 10 and 11, the Supreme court held as follows:

"Para 10: ... The situation is where the employer has on his pay-rolls labour officers, legal advisers - lawyers in the garb of employees - and they are appointed Presenting-cum-Prosecuting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself. Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable

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opportunity to defend himself should be permitted to appear through a legal practitioner. Why do we say so ? Let us recall the nature of enquiry, who held it, where it is held and what is the atmosphere ? Domestic enquiry is claimed to be a managerial function. A man of the establishment dons the robe of a Judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased judge ? The Enquiry Officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to these uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not a euphemism for courts alone, it applies with equal vigour an rigour to all those who must be responsible for fair play in action. And a quasi-judicial tribunal cannot view the matter with equanimity on inequality of representation. ..."

Para 11: We are faced with the situation where when the enquiry commenced, the rules neither provided for permitting the delinquent employee to be represented by an advocate nor an embargo was placed on such appearance. The rules were silent on this point. But the Chairman of the appellant while rejecting the request of the 1st respondent seeking permission to appear through a legal practitioner simultaneously appointed M/s.R.K. Shetty and A.B. Chaudhuary, Legal Adviser and Junior Assistant Legal Adviser respectively, in the employment of the appellant as Presenting-cum-Prosecuting Officers. What does this signify ? The normal inference is that according to the Chairman of the appellant the issues that would arise in the enquiry were such complex issues involving intricate legal propositions that the Enquiry Officer would need the assistance of Presenting-cum-Prosecuting Officers. And look at the array of law officers of the appellant appointed for this purpose. Now examine the approach of the Chairman. While he directed two of his law officers to conduct the enquiry as prosecutor, he simultaneously proceeds to deny such legal representation to the delinquent employee, when he declined the permission to

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the 1st respondent to appear through a legal practitioner. Does this disclose a fair attitude or fair play in action ? Can one imagine how the scales were weighted and thereby tilted in favour of the prosecuting officer. In this enquiry the employer would be represented by two legally trained minds at the cost of the Port Trust while the 1st respondent was asked either to fend for himself in person or have the assistance of another employee such as Nadkarni who is not shown to be a legally trained person, but the delinquent employee cannot engage a legal practitioner at his cost. Can this ensure a fair enquiry ? The answer is not far to seek. Apart from any legal proposition or formulation we would consider this approach as utterly unfair and unjust. More so in absence of rules, the Chairman of the appellant was not precluded from granting a request because the rules did not enact an inhibition. Therefore, apart from general propositions, in the facts of this case, this enquiry would be a one-sided enquiry weighted against the delinquent officer and would result in denial of reasonable opportunity to defend himself. He was pitted against the two legally trained minds and one has to just view the situation where a person not admitted to the benefits of niceties of law is pitted against two legally trained minds and then asked to fend for himself. In such a situation, it does not require a long argument to convince that the delinquent employee was denied a reasonable opportunity to defend himself and the conclusion arrived at would be in violation of one of the essential principles of natural justice, namely, that a person against whom enquiry is held must be afforded a reasonable opportunity to defend himself."

[Emphasis added]

11. Further, in paragraph 13 of the very same judgment, the Supreme Court held as follows:

"..... In fact one can go so as to say that the Enquiry Officer in order to be fair and just, whenever he finds the employer appointing legally trained persons as Presenting - cum Prosecuting officers must enquire from the delinquent employee before commencement of enquiry whether he would like to take assistance of a legal practitioner. The option then is with the delinquent employee. In this connection, we would like to refer to a weighty observation on this point where dispute constitutional inhibition this Court

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> conceded such a right. In A.K.Roy v. Union of India at page 334 (Para 93) [1982 SCC (Cri) p.208], the learned chief Justice while rejecting the contention that a detenu should be entitled to appear through a legal adviser before the Advisory Board observed that Article 22(3)(b) makes it clear that the legal practitioner should not be permitted to appear before any Advisory Board for any party. While noting this constitutional mandate, the learned Chief Justice proceeded to examine, what would be the effect if the department is represented before the Advisory Board by a legally trained person. It was held that in such a situation despite the inhibition of Article 22(3)(b) the fair procedure as contemplated by Article 21 requires that a detenu be permitted to appear by a legal practitioner."
>
> [Emphasis added]

12. Therefore, it is clear that the line of decisions of the Apex court makes it clear that if there is an imbalance in the matter of defending proceedings before a quasi-judicial body, then it will result in violation of Article 14 of the Constitution of India. Therefore, the authorities must permit the defence by a legal practitioner if one party has such a facility even if there was a constitutional / legal bar under a statute. Section 36(4) of the I.D. Act must therefore be interpreted only in this context.

13. When a question came up before the Allahabad High Court, the Honourable Markandey Katju, J. (as he then was), vide his decision reported in 1992 - 1 L.L.N. 972 [I.C.I. India Ltd. vs. Labour Court (IV) and another], held that Section 36(4) of the I.D. Act and a similar provision i.e., 6-I (2) of the U.P. Industrial Disputes Act are ultravires of the Constitution. For holding Section 36(4) of the I.D. Act as unconstitutional, the learned Judge held as follows in paragraphs 3 to 6 of the said judgment, which are usefully extracted below:

> "..... In my opinion, S.6-1(2) of the Uttar Pradesh Act as well as S.36(4) of the Central Industrial Disputes Act are ultra vires Arts. 14 and 19(1)(g) of the Constitution of India, and are consequently illegal. It is well known that industrial law is a complicated branch of law, and only persons who have knowledge of labour laws, and also some practical experience, can properly represent the parties before the Labour Court / Tribunal. The principles of labour laws are quite different from the principles of ordinary civil law, and what to say of a lay man even an ordinary civil lawyer, unless he has studied labour law, cannot properly present the case

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before the Labour Court / Tribunal. For example, it is an established principle in labour law that the Labour Court has got powers which no civil Court has got, example to create contracts, and to enforce contracts of personal service. Labour law is largely Judge-made law, and hence only a person who has studied this branch of law can properly represent a party before the Labour Court. It has become a highly technical branch, and only trained persons can properly assist the Labour Court / Tribunal in the matter. Hence, to debar lawyers merely because the opposite party objects is wholly unreasonable and arbitrary."

Para 4: The argument that lawyers will cause delay is, in my opinion, wholly frivolous. No doubt the aim of industrial adjudication is to expeditiously decide an industrial dispute because industrial friction affects not only the employer and the workmen, but also the public at large, appearance of a lawyer will obstruct expeditious disposal. On the contrary a lawyer who is trained in labour law can quickly focus the attention of the Labour Court/Tribunal to the main points of the dispute, Labour Court can quickly dispose of the dispute. Hence, debarring of lawyers, even with the proviso that a lawyer can appear if the other side gives consent, is in my opinion, wholly arbitrary. As a matter of fact, it is well known that this arbitrary provision in the two Industrial Disputes Act, viz., S.36(4) in the Industrial Disputes and S.6-L(2) of the Uttar Pradesh Industrial Disputes Act, has led to all sorts of subterfuges. Lawyers have had to resort to creation of artificial employer's or employees' organisations of which they claim to be representatives, or appear as officers of the concern. This invites all sorts of objections and much time of the Labour Court has to be wasted and devoted to first deciding this matter before proceeding to dispose of the dispute on merits. The provision, to my mind, is clearly arbitrary, and hence violative of Article 14 of the Constitution of India.

Para 5: The procedure in the Labour Courts, though slightly different from those of the civil Court, is still similar to it, and hence this requires study of the procedure also, which an untrained person does not know. For example, certain provisions of the Civil Procedure Code apply to the Labour Couts also, vide S.11(3) of the Central Act. Similarly many other provisions in the

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> Industrial Disputes Act are similar to the provisions in the Civil Procedure Code. It is, therefore, wholly unreasonable to expect a layman to present his case properly before the Labour Court without assistance of a specialised lawyer.
>
> Para 6: In my opinion, the aforesaid provisions in both the Central and Uttar Pradesh Acts are also violative of Art.19(1)(g) of the Constitution of India since they amount to unreasonable restriction on a lawyer's right to practise his profession. A whole class of labour lawyers has sprung up after enforcement of the Industrial Disputes Act, and the aforesaid provisions amount to unreasonable restriction on their right to practise. To say that lawyers raise all sorts of technical objections to delay the disposal of the case, is to my mind, a wholly frivolous objection. The Presiding Officer of the Labour Court/Tribunal can always conduct the proceedings firmly and in such a manner that no delay is caused, and he can always reject any objection which he find to be frivolous or hypertechnical and which comes in the way of speedy disposal of the dispute."
>
> [Emphasis added]

14. The learned Judge when confronted with the judgment of the Supreme Court reported in (1976) 1 L.L.J. 409 [Paradip Port Trust vs. Their Workmen] held that the said judgment did not deal with the vires of Section 36(4) of the I.D. Act and hence, has no application in deciding the vires of the provision. In the present case, though in one set of writ petitions vires of Section 36(4) of the I.D. Act has been raised but proper parties, i.e., the Union of India and State of Tamil Nadu, have not been made as parties and hence, I am unable to take up the Constitutionality of the said provision.

15. While striking down Section 20-A of the Haryana Ceiling on Land Holdings Act which prohibited the lawyers from appearing before any authority or officer functioning under that Act and delivering the Judgment on behalf of the Full Bench of the Punjab and Haryana High Court in AIR 1977 Punjab & Haryana 221 [Smt.Jaswant Kaur and another vs. The State of Haryana and another], Justice O.Chinnappa Reddy (as he then was) quoted a poem to highlight the distrust shown on legal practitioners' appearance by enacting such legislative exclusions. In paragraph 18 of the said judgment, the following passage is found:

> "Para 18: ..... While it is not for us to question the legislative wisdom in enacting S.20-A, we are unable to discover any reason for the provision. Perhaps it is founded on the unfounded distrust expressed by a wit:

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"In the heels of the higgling lawyers,
Too many slippery ifs and buts and
howevers.
Too much hereinbefore provided whereas,
Too many doors to go in and out of,
When the lawyers are through
What is there left Bob ?
Can a mouse nibble at it
And find enough to fasten a tooth
in ?"

Thus, saying so, the Full Bench of the Punjab and Haryana High Court removed the bar imposed on Advocates appearing before an authority or Officer functioning under that Act.

16. This view of the Full Bench of the Punjab and Haryana High Court was subsequently approved by the Supreme Court vide its decision reported in (1987) 2 SCC 692 [H.S.Srinivasa Raghavachar vs. State of Karnataka and others] in which it was held that Section 48-A of the Karnataka Land Reforms Act, 1961 prohibiting legal practitioners from appearing in a proceedings before the Tribunal constituted under that Act as ultravires in the following lines:

> "Para 9: ... We adopt the reasoning of the High Court of Punjab and Haryana and direct that Section 48(8) will not be enforced so as to prevent advocates from appearing before the Tribunals functioning under the Act."

Though in the decision of the Full Bench of the Punjab and Haryana High Court in the Haryana Land Ceiling case and the Supreme Court judgment in the Karnataka Reforms Act, the issue of bar on advocates was decided on the basis of the legislative competence of the State, these two decisions are only quoted to show the trend of judicial decision making in the matter of prohibition of legal practitioners' appearance before quasi-judicial bodies.

17. Per contra, the learned counsel appearing for the respondents workmen submitted that the Division Bench of the Delhi High Court upheld the Constitution validity of Section 36 in its judgment reported in 1988 - 1 - L.L.J. 135 [The Co-operative Store Ltd., New Delhi vs. O.P.Dwivedi P.O. Industrial Tribunal II and others]. The learned counsel for the workmen also drew the attention of this Court to the two judgments of this court interpreting Section 36(2) of the I.D. Act. The first judgment is the one reported in 1998 (1) L.L.N. 712 [R.M.Duraiswamy vs. Labour Court, Salem and others] where the learned Judge of this Court held as to the true scope and meaning of Section 36(1) and 36(2) of the I.D. Act. But, however did not decide the issue which is nhow before this Court.

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18. The same view was followed by another learned Judge of this Court vide his judgment reported in 2001 (2) L.L.N. 1111 [Tamil Nadu Industrial Co-operative bank Ltd. vs. Presiding Officer, Labour Court, Coimbatore and another]. Therefore, the issue raised in this writ petition has not directly come up for consideration before this Court. However, the learned counsel appearing for the workmen submitted that several other High courts have considered this point and this Court is bound to take note of the same and adopt the reasoning which are in favour of the workmen.

19. In this context, a reference was made to the following judgments for the proposition that the consent of the workman is essential for the Management to engage a lawyer and that consent cannot taken to be implied and the question of consent can be raised at any time of the proceedings.

(i) 1998 (4) L.L.N. 908 [General Manager, National Bank for Agricultural and Rural Development vs. Presiding Officer, Industrial Tribunal - I, Hyderaband and another] - Andhra Pradesh High Court.

(ii) 1999 (1) L.L.N. 983 [Prasar Bharathi Broadcasting Corporation of India vs. Suraj Pal Sharma and others] - Delhi High Court.

(iii) 1999 (2) L.LN. 1070 [Bhavani Art Handicrafts vs. Gulab Singh and others - Rajasthan High Court

(iv) 1999 (4) L.L.N. 290 [J.B. Transport Company and others vs. Shankarlal @ Mavaram Nathuji Patel] - Gujarat High Court.

(v) 2003 (2) L.L.N. 773 [Lakshmi Engineering Industries vs. State of Rajasthan and others] - Rajasthan High Court.

(vi) 2004 Lab. I. C. 4035 [Management of Muttapore Tea Estate, Assam vs. Presiding Offcer, Labour Court, Dibrugarh, Assam] - Gauhati High Court.

(vii) 2004 (2) SLR 665 [Grapes Synthetics Pvt. Ltd. vs. The Judge, Labour Court, Bhilwara] - Rajasthan High Court.

(viii) 2005 (105) FLR 300 [Chandrakanth and others vs. All India Reporter Ltd.] - Bombay High Court - Nagpur Bench.

(ix) 2005 (105) FLR 256 [Brooke Bond Lipton India Ltd. vs. Brooke Bond Sramik Union] - Orissa High Court.

(x) 2004 - 1 CLR 163 [Hindustan Motor Ltd. vs. Presiding Officer and others] - Delhi High Court

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20. However, in none of the above decisions, there is any reference to the Constitution Bench judgment of the Supreme Court in A.K.Roy's case (cited supra) wherein even against a constitutional and statutory bar, the Apex Court observed that if one side is represented by a legal practitioner, then the other side cannot be denied as it is discriminatory and violative of Article 14 of the Constitution of India. Even the effect of subsequent decision of the Supreme Court in Bombay Port Trust case (cited supra) was not considered in its real spirit.

21. Even though in the present petitions, the aggrieved party is Management, we will have to consider the case in all angles. In these days, most of the cases before the Labour Court are all matters relating to non-employment of individual workman filed under Section 2 A of the I.D. Act or in the alternative, claim petitions filed under Section 33 C (2) claiming certain amount as are due to the workmen from their employer and it is a common knowledge that most of these cases are filed by individuals, who are having no affiliation to any trade Union. In that context, if they are pitted against officers of any Management trained in law representing the Management, that will also result in a disadvantageous position to the workmen.

22. Further, gone are the days, to presume that the entry of the lawyers will bring in technicalities to industrial adjudication, which will result in delay in disposal. Today, notwithstanding that the finality is attached to the Awards of the Labour Courts, large number of matters are taken to High Court, first, by way of writ proceedings and thereafter, by intra-Court appeals and sometimes even to the Supreme Court. Also the field has become highly technical as pointed by the Allahabad High Court. Given a situation when many technicalities are involved in getting the dispute adjudicated, we cannot consider an individual workman or an untrained trade representative defending their case without legal assistance. Today, thanks to Article 39-A of the Constitution of India providing for legal aid to poor and the Parliament has also enacted Legal Aid Services Authority Act and such authorities having been created from Taluk level to the level of Supreme Court, a workman can have the assistance of a lawyer of his choice, if those names are in the panel of the Legal Aid Services and such a legal assistance can be obtained free of cost. We should have a new look on the issue relating to Section 36(4) of the I.D. Act.

23. In the present sets of writ petitions, it is seen that though the workmen were technically represented by a leader of the Trade Union to which they belong, but, however, the said representative (G.Muthu) is an Advocate practising before the High Court and the other Subordinate Courts and who has rich experience in dealing with labour laws for over 30 years. If the same benefit is denied to the

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Management on the basis of the workmen not giving consent in terms of Section 36(4) of the I.D. Act, certainly it will result in an imbalance being created in defending the case before a quasi-judicial body and it will violate Article 14 of the Constitution of India. This type of withholding of consent by the workmen was never contemplated in a case where workmen have a trained lawyer whereas the Management (in the second set of cases, a Public Sector Management) is not being allowed to defend its case by a legal practitioner. This had resulted in an anamolous situation. In fact, in the garb of exercising their right of withholding consent in the first set of cases, the workman and his representative waited for 55 adjournments and had allowed the Management to be represented by a lawyer including filing vakalat at an earlier point of time and have raised this issue after a period of five years.

24. In the second set of cases involving the Milk Federation, which is an Apex Co-operative Society, they themselves were forced to file an application seeking for permission of the Court to engage a lawyer and the same was resisted by the workmen and their representative especially while deciding a claim petition filed under Section 33 C (2) of the I.D. Act which is only in the nature of an execution petition.

25. Therefore, for the aforesaid reasons, I hold that in the case of the respondents / workmen engaging a trained reasoned lawyer in the garb of a trade union leader, the writ petitioner Managements should not be denied the very same right by relying upon Section 36(4) of the I.D. Act. This will result in grave injustice and will be in violative of Article 14 of the Constitution of India in the light of A.K.Roy's case and Bombay Port Trust case (cited supra). Therefore, the impugned orders passed by the first respondent Labour Courts dated 03.3.2006 and 19.6.2006 are hereby set aside and it is directed that the respondent Managements are entitled to engage a legal practitioner of their own choice in the peculiar facts and circumstances of the cases.

26. Since the first set of cases relate to non-employment and the matter is held up for five years, the Presiding Officer, Labour Court, Chennai, is directed to dispose of the same within a period of three months from today, which is the period contemplated under the provisions of the I.D. Act. In the second set of cases, as it is only a claim petition, which is in the nature of an execution petition and it is also of the year 2004, the II Additional Labour Court, Chennai, is directed to dispose of the same in accordance with law within a period of three months from today. Both the workmen and Management in all the writ petitions are directed to co-operate in getting on with the trial without putting any further spokes on the smooth progress of the trial.

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27. The writ petitions are allowed with the above directions. Consequently, connected Miscellaneous Petitions will stand dismissed as unnecessary. However, there will be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vsi/rao/gri

To

1. The Presiding Officer,
   Principal Labour Court, Chennai.

2. The Presiding Officer,
   II Additional Labour Court,
   Chennai.

+1cc to Mr.S.Ramasubramanian Associates Sr 3796
+1cc to M/s.T.S.Gopalan & Co., Advocate Sr 3540
+6ccs Mr.V.R.Rajendran, Advocate Sr 3589 to 3594
+4ccs to Mr.P.Gunaraj,Advocate Sr 3596 to 3599

NTK (CO)
km/3.2.

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